IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1709 OF 2006

AND

CIVIL APPLICATION NO. 1710 OF 2006

IN

SECOND APPEAL NO. 591 OF 2002

Gopal Sadhashiv Gokhale & Ors. .... Applicants

Vs.

Smt. Rohini Chandrashekhar Datar .... Respondents & Ors.

Mr. N.V. Walawalkar, Senior Advocate for Applicants
Mr. V.S. Gokhale for Respondent Nos. 1 and 2

CORAM : A.S. OKA, J.
DATE : 14TH DECEMBER 2007

1) Heard learned Senior Counsel appearing for the Applicants and the learned Counsel for the Respondent Nos. 1 and 2. No case is made out for grant of relief in terms of prayer clauses (a) to (c) of Civil Application No. 1709 of 2006.

2) Learned Senior Counsel appearing for the Applicants pointed out that while admitting the Appeal, this Court has not framed substantial questions of law. After having heard the learned Counsel appearing for the parties, in my view, this is a fit case to invoke the powers under the

Proviso to Sub Section 5 of Section 100 of the Code of Civil Procedure, 1908 for framing the substantial questions of law which are involved in the Second Appeal

3) Accordingly following substantial questions of law are framed :

(I) Whether the execution of the will can be said to be suspicious even if, (1) the will be registered one, (2) the signature of the testator on Will is not disputed, (3) Both the attesting witnesses have disposed that the Will was read over to the testator and thereafter she signed it in their presence and they signed it in her presence, (4) All the requirements of S.63 Indian Succession Act are satisfied and (5) The trial Court has not doubted execution and genuineness of Will ?

(II) Whether the mutation entry in revenue record conveys or extinguishes title to the property?

(III) When the trial Court has not doubted the execution and genuineness will whether it is proper on part of Appellate Court to discard the registered will by doubting it’s genuineness ?

(IV) When there is no whisper in the trial court judgment about genuineness of the Registered Will, whether the appellate court for the first time can give a finding about genuineness of the Registered Will?

4) Applications are disposed of accordingly.

(A.S. OKA, J.)